

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 986 of 1997

STATE OF GUJARAT

Versus

PRAGJI NARSHI

Appearance:

MR MUKESH A PATEL, AGP, for Appellant

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Order: 14/09/98

C.A.V. ORDER

Heard the learned counsel for the appellant.

2. This appeal is directed against the judgment and award of learned 3rd Extra Assistant Judge, Rajkot at Gondal in Land Acquisition Reference Case No. 542/89 decided on 30-10-1996 under which the Reference Court has awarded additional compensation to the claimant-respondent at the rate of Rs.50/- per Are for bagayat land.

3. Notification under section 4 of the Land Acquisition Act, 1894 was published in the gazette on 11-6-1987. Notification under section 6 of the aforesaid Act was published in the gazette on 1-10-1987. The Land Acquisition Officer vide its award dated 30-11-1987 awarded compensation to the claimant-respondent for the acquisition of the land at the rate of Rs.90/- per Are. As this compensation awarded was considered towards lower side at the instance of the claimant, the Land Acquisition Officer made reference of the matter to the Civil court. Under the impugned award, the amount of compensation has been enhanced. Hence this appeal before this Court.

4. Before the Reference Court from the side of the claimant, the claimant himself was examined vide Ex.9. From the side of the opponent-appellant, one Shri Mohanlal Malshibhai was examined vide Ex.13. However,

the opponent-appellant herein has not produced any documentary evidence in support of its case.

5. Learned counsel for the appellant contended that the Reference Court should have rejected the reference of the claimant-respondent only on the ground that the same has not been filed within limitation. Second contention has been raised that the Reference Court has committed serious error in awarding the additional compensation relying on its previous decision in Land Reference Case No.534/88, which is produced vide Ex.8/2 on the record of the Reference Court.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the appellant.

7. The Land Acquisition Officer passed the award on 30-12-1987 and Reference case has been filed on 12-8-1988 in the civil court. These dates have not been disputed by the learned counsel for the appellant. From the judgment of the Reference Court, I find that the Land Acquisition Officer issued notice under section 12 (2) of the Act, 1894 to the respondent-claimant but therein he has not mentioned the date on which the said notice was issued and on which date it was served upon the claimant-respondent. The claimant-respondent applied for the copy of the award on 27-4-1988 which was delivered on 6-8-1988. He submitted the Reference Application on 12-8-1988. It is time and again stated by the Apex Court that the State which is a welfare State should not defend the fair claims of the litigants only on the technical grounds of limitation etc. This is exactly what the learned counsel for the appellant is contending in this matter. The Reference is sought to be contested only on the technical ground of limitation. Be that as it may. The Reference Court has considered it to be within limitation to which decision in this appeal no exception can be taken more so when I do not find any illegality in the award of the Reference court on merits.

8. Now I may advert to the other contention raised by the learned counsel for the appellant. The learned counsel for the appellant is unable to successfully challenge the finding of the Reference Court that the land which was subject matter of the previous decision in the Land Reference Cast No.534/88 and the land which is subject matter of the present proceedings are of same village. Further he is unable to successfully challenge the finding that both these lands are situated just adjacent to each other and they are quite similar in

quality and fertility. On the basis of the appreciation of the evidence, the Reference Court has recorded a finding of fact that the land which is subject matter of this appeal is not found to be inferior to the land subject matter of the previous decision. Taking into consideration this vital aspect of the matter, the learned Reference Court has relied on that previous decision to determine the just, reasonable and adequate compensation to be awarded in the present case to the claimant-respondent. In the previous judgment, the compensation has been awarded for bagayat land at the rate of Rs.140/- per Are. In the present case, the compensation has been awarded to the claimant-respondent at the said rate to which no exception can be taken. Learned counsel for the appellant does not dispute that the land of the claimant-respondent is also a bagayat land.

No other point has been raised.

9. In the result, this appeal fails and the same is dismissed.

(S.K. Keshote,J)

zgs/-